

Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: October 24, 2011

FROM: CITY ATTORNEY

**SUBJECT: AN ORDINANCE CREATING CHAPTER 8.65 TO BAN PLASTIC BAGS
AND PROMOTE THE USE OF REUSABLE BAGS**

TITLE OF PROPOSED ORDINANCE

AN ORDINANCE OF THE CITY OF PASADENA CREATING CHAPTER 8.65 OF THE PASADENA MUNICIPAL CODE TO REGULATE THE USE OF PLASTIC CARRYOUT BAGS AND RECYCLABLE PAPER BAGS AND PROMOTE THE USE OF REUSABLE BAGS

PURPOSE OF ORDINANCE

As directed by the City Council on October 3, 2011, this ordinance will add Chapter 8.65 to the Pasadena Municipal Code. Chapter 8.65 will ban the use of plastic carryout bags at certain stores in the City, and impose a fee on the use of paper bags, with limited exceptions. The prohibitions and requirements will become effective on a rolling basis.

REASON WHY LEGISLATION IS NEEDED

This legislation is needed to address the environmental and economic impacts that result from the litter problems associated with plastic carryout bags. This legislation would also bring consistency to the regulation of plastic carryout bags and the fee on paper bags being imposed across the County of Los Angeles, consistency which the grocers' associations have requested of local agencies.

The County is currently in litigation regarding a claim that the fee imposed by its ordinance violates Proposition 26. Proposition 26 requires a two-thirds supermajority vote in the California State Legislature to pass many fees, levies, charges and taxes

MEETING OF 10/24/2011

AGENDA ITEM NO. 12

that previously could be enacted by a simple majority vote. The County's position is that the fee does not violate Proposition 26 since the revenue from the fee is not payable to the County and therefore is not a tax. This ordinance contains the same fee, however many jurisdictions are supporting the County's position and continuing to include the fee in their ordinances until ordered to do so otherwise. We recommend that the City do the same.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED

The Planning Department will implement the proposed ordinance through modifications to the Municipal Code, and may seek assistance with implementation from the Health Department.

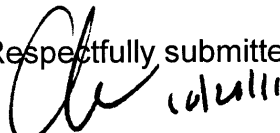
FISCAL IMPACT

There will not be an immediate fiscal impact as a result of this amendment to the Municipal Code. The fees from paper bags will be collected by the regulated stores and will be used by the stores to cover the cost of implementing the ordinance.

ENVIRONMENTAL DETERMINATION

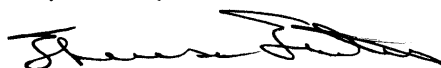
On October 3, 2011, the City Council adopted an Addendum to the County of Los Angeles' Final EIR regarding its model plastic carryout bag ordinance, and also adopted a Mitigation Monitoring Program and a Statement of Overriding Considerations.

Respectfully submitted,



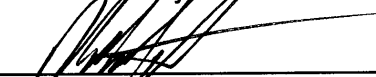
Michele Beal Bagneris
City Attorney

Prepared by:



Theresa E. Fuentes
Assistant City Attorney

Concurred by:



Michael J. Beck
City Manager

Introduced by: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA CREATING CHAPTER 8.65 OF THE PASADENA MUNICIPAL CODE TO REGULATE THE USE OF PLASTIC CARRYOUT BAGS AND RECYCLABLE PAPER BAGS AND PROMOTE THE USE OF REUSABLE BAGS

The people of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and corresponding cost of publication will be published by title and summary as permitted by Section 508 of the City Charter. The approved summary of this ordinance is as follows:

“SUMMARY

This proposed ordinance will add Chapter 8.65 to the Pasadena Municipal Code. Chapter 8.65 will ban the use of plastic carryout bags at certain stores in the City, and impose a fee on the use of paper bags, with limited exceptions. The prohibitions and requirements set forth therein will become effective on a rolling basis.

Ordinance No. _____ shall take effect upon publication.”

SECTION 2. The City Council of the City of Pasadena hereby finds and declares that plastic carryout bags constitute a high percentage of litter, which is unsightly, costly to clean up, and causes serious negative environmental impacts. The City has a substantial interest in protecting its residents and the environment from the negative impacts of plastic carryout bags. On November 16, 2010, the Los Angeles County

Board of Supervisors approved an Environmental Impact Report (“EIR”) and adopted an ordinance banning single-use plastic carryout bags from stores, while requiring stores that provide recyclable paper carryout bags to charge customers ten cents per bag to cover reasonable costs associated with the ordinance. The County’s ordinance encouraged the 88 incorporated cities within the County to adopt similar ordinances and the County’s EIR specifically analyzed the possibility of the 88 incorporated cities adopting ordinances banning plastic carryout bags. The City intends this ordinance to fall within the scope of the County’s EIR and has therefore modeled this ordinance after the County’s ordinance. On October 3, 2011, the City adopted an Addendum to the County’s EIR, and also adopted a Mitigation Monitoring Plan and Statement of Overriding Considerations.

SECTION 3. Title 8 of the Pasadena Municipal Code is hereby amended by adding Chapter 8.65 which reads as follows:

“Chapter 8.65
Plastic Carryout Bags”

SECTIONS:

- 8.65.010 Definitions.
- 8.65.020 Plastic carryout bags prohibited.
- 8.65.030 Permitted bags.
- 8.65.040 Regulation of recyclable paper carryout bags.
- 8.65.050 Use of reusable bags.
- 8.65.060 Exemptions.
- 8.65.070 Operative Date
- 8.65.080 Enforcement and violation – penalty.
- 8.65.090 Severability.
- 8.65.100 No conflict with federal or state law.

8.65.010 Definitions.

For purposes of this chapter, the following definitions shall apply:

- A. “Customer” means any person purchasing goods from a store.
- B. “Operator” means the person in control of, or having the responsibility for, the operation of a store, which may include, but is not limited to, the owner of the store.
- C. “Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.
- D. “City Sponsored Event” means any event organized or sponsored by the City of Pasadena or any Department of the City of Pasadena.
- E. “Farmer’s Market” means a market where farmers who grow produce sell their fruits and vegetables directly to the public.
- F. “Plastic carryout bag” means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, which is provided to a customer at the point of sale. “Plastic carryout bag” includes compostable and biodegradable bags but does not include reusable bags, produce bags, or product bags.
- G. “Postconsumer recycled material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. “Postconsumer recycled material” does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

H. "Produce bag" or "product bag" means any bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.

I. "Recyclable" means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

J. "Recyclable paper carryout bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber, (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) post-consumer recycled material; (3) is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; (4) is accepted for recycling in curbside programs in the City; (5) has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the percentage of postconsumer recycled material used; and (6) displays the word "Recyclable" in a highly visible manner on the outside of the bag.

K. "Reusable bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (2) has a minimum volume of 15 liters; (3) is machine washable or is made from a

material that can be cleaned or disinfected; (4) does not contain lead, cadmium, or any other heavy metal in toxic amounts; (5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and (6) if made of plastic, is a minimum of at least 2.25 mils thick.

L. "Store" means any of the following retail establishments located within the City:

(1) A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;

(2) A store of at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code;

or

(3) A drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack

foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

8.65.020 Plastic carryout bags prohibited.

- A. No store shall provide to any customer a plastic carryout bag.
- B. No Farmer's Market shall provide to any customer a plastic carryout bag.
- C. This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to produce bags or product bags.
- D. No person or store shall distribute plastic carryout bags at any City facility, any event held on City property, or at any City sponsored event.

8.65.030 Permitted bags.

All stores shall provide or make available to a customer only recyclable paper carryout bags or reusable bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Chapter. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

8.65.040 Regulation of recyclable paper carryout bags.

- A. Any store that provides a recyclable paper carryout bag to a customer must charge the customer 10 cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.
- B. No store shall rebate or otherwise reimburse a customer any portion of the 10

cent (\$0.10) charge required in Subsection A, except as otherwise provided in this Chapter.

C. All stores must indicate on the customer receipt the number of recyclable paper carryout bags provided and the total amount charged for the bags.

D. All monies collected by a store under this Chapter will be retained by the store and may be used only for any of the following purposes: (1) costs associated with complying with the requirements of this Chapter, (2) actual costs of providing recyclable paper carryout bags, or (3) costs associated with a store's educational materials or education campaign encouraging the use of reusable bags, if any.

E. All stores must keep records of the total number of recyclable paper carryout bags provided, the total amount of monies collected for providing recyclable paper carryout bags, and a summary of any efforts a store has undertaken to promote the use of reusable bags by customers in the prior year. Such records must be made available for the City to review at any time.

F. If the reporting required in Subsection E is not timely submitted by a store, such store shall be subject to the fines set forth in Section 8.65.080.

8.65.050 Use of reusable bags.

A. All stores must provide reusable bags to customers, either for sale or at no charge.

B. Each store is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags.

8.65.060 Exemptions.

A. Recyclable paper carryout bags may be distributed to customers free of charge at Farmer's Markets.

B. Recyclable paper carryout bags may be distributed to customers free of charge at any City facility, any event held on City property, or at any City sponsored event.

C. All stores must provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags or both, at the store's option, to any customer participating either in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code.

D. All stores required to provide plastic carryout bags as a condition of use or as required to abate a nuisance, whether such condition is imposed by the City, a court of law, and/or any other regulatory entity, shall not be in violation of this Chapter during the time such condition is in effect.

8.65.070 Operative date.

This Chapter shall become operative on July 1, 2012 for Farmer's Markets and stores defined in Subsections L(1) and L(2) of Section 8.65.010. For stores defined in Subsection L(3) of Section 8.65.010, this Chapter shall become operative on December 31, 2012.

8.65.080 Enforcement and violation-penalty.

A. It shall be unlawful for any person to violate the provisions of this Chapter. A violation of this Chapter shall be punishable under the administrative citation procedures set forth in Sections 1.25 and 1.26. The fine imposed for a particular violation shall be in the amount set forth in the administrative citation schedule established by resolution of the city council pursuant to Section 1.26.060. The City Manager or his/her designee has primary responsibility for enforcement of this Chapter.

B. All fines collected pursuant to this Chapter shall be deposited in the General Fund to assist the City with its costs of implementing and enforcing the requirements of this Chapter.

8.65.090 Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Ordinance, or its application to any other persons or circumstance. The City Council of the City of Pasadena hereby declares that it would have adopted this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Ordinance would be subsequently declared invalid.

8.65.100 No conflict with federal or state law.

Nothing in this Ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law."

SECTION 4. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 5. This ordinance shall take effect upon publication.

Signed and approved this _____ day of _____, 2011.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Published:

MARK JOMSKY
CITY CLERK

APPROVED AS TO FORM:



Theresa E. Fuentes
Assistant City Attorney